

## **REMARKS**

Claims 10, 13-14, 16-20 are pending in the application; claims 19 and 20 have been added; claim 11-12 and 15 are canceled.

### **Claim Objections**

In claims 17 and 18 the spelling errors have been corrected.

### **Claim Rejections - 35 U.S.C. 101**

Claims 10-18 stand rejected under 35 U.S.C. 101 because the invention is directed to non-statutory subject matter.

Applicant has added apparatus features to claim 10: digital recording device; display; memory; computing platform. The steps of digitalizing and converting the images to grayscale etc. require a computing platform; likewise, the images in order to be indicated or displayed require a display; in order for the data/images to be saved a memory is required. Therefore, the apparatus features are inherently present and no new matter has been added.

A practical application is set forth in the disclosure: the invention enables the fast and reliable detection of airborne or water-borne microorganisms (spores and bacteria) in order to sound an alarm and/or take steps when the level is too high or harmful species are present or for providing a documentation of the microorganism loading e.g. for evaluation purposes (see, for example: page 1, 2nd paragraph; paragraph bridging pages 1 and 2; Page 3, last full paragraph). See claim 19 and claim 20.

Reconsideration and withdrawal of the rejection of the claims under § 101 are respectfully requested.

### **Rejection under 35 U.S.C. 112**

The claims 10-18 stand rejected under 35 USC 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner states that the preamble of claim 10 recites microorganisms but the body of the claim recites "objects". It has now been set forth in claim 10 that the objects

represent the microorganisms, i.e., the image that is produced is of course only a representation of the microorganism and not the microorganism itself; thus, the images contain objects and not microorganisms and the objects are being processed and evaluated.

The phrase "and/or" has been eliminated from the claims.

Antecedence has been provided for the classification system in claim 10.

All verbs are now recited in the active form.

The features of claim 15 have been incorporated into claim 10 and, in doing so, the language has been revised in view of examiner's comments. The language is based partially on the disclosure in the paragraph bridging pages 7 and 8 and the last full paragraph of page 4.

Reconsideration and withdrawal of the rejection of the claims under 35 USC §112 are respectfully requested.

### **Priority**

The examiner states that the instant application has a priority date of 10/1/2004 because no certified English translation of the priority papers has been filed.

It is respectfully submitted that **37 CFR 1.55 Claim for foreign priority** does not require a translation to be filed. As set forth in this section:

(4)

(i) An English language translation of a non-English language foreign application is **not required except:**

- (A) When the application is involved in an interference (see §§ 41.202 of this title),
- (B) When necessary to overcome the date of a reference relied upon by the examiner, or
- (C) When specifically required by the examiner.

The application is not involved in interference; there is no reference cited by examiner whose date must be overcome; examiner has not specifically requested that a translation be filed and there is no apparent reason why examiner should request such translation, i.e., interference or overcoming another reference. Applicant has fulfilled the necessary requirements according to 35 USC 119: a claim to the priority date has been

made and a certified copy of the priority papers has been submitted. Therefore the priority date of the instant application is rightfully October 2, 2003.

**Rejection under 35 U.S.C. 102**

Claims 10-14 and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 2003/0096302.

Claim 10 has been amended by incorporating therein the features of claim 15 which has not been rejected over prior art and should thus be allowable. Also included are the features of claim 13.

Reconsideration and withdrawal of the rejection of the claims under 35 USC 102 are respectfully requested.

**CONCLUSION**

In view of the foregoing, it is submitted that this application is now in condition for allowance and such allowance is respectfully solicited.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate a phone call or e-mail from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on July 27, 2009,

/Gudrun E. Huckett/

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